

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

MEMPHIS CENTER FOR REPRODUCTIVE
HEALTH, on behalf of itself, its physicians and staff,
and its patients; PLANNED PARENTHOOD OF
TENNESSEE AND NORTH MISSISSIPPI, on behalf of
itself, its physicians and staff, and its patients;
KNOXVILLE CENTER FOR REPRODUCTIVE
HEALTH, on behalf of itself, its physicians and staff,
and its patients; FEMHEALTH USA, INC., d/b/a
CARAFEM, on behalf of itself, its physicians and staff,
and its patients; DR. KIMBERLY LOONEY, on behalf
of herself and her patients; and DR. NIKKI ZITE, on
behalf of herself and her patients,

Plaintiffs,

v.

HERBERT H. SLATERY III, Attorney General of Tennessee, in his official capacity; LISA PIERCEY, M.D., Commissioner of the Tennessee Department of Health, in her official capacity; RENE SAUNDERS, M.D., Chair of the Board for Licensing Health Care Facilities, in her official capacity; W. REEVES JOHNSON, JR., M.D., President of the Tennessee Board of Medical Examiners, in his official capacity; HONORABLE AMY P. WEIRICH, District Attorney General of Shelby County, Tennessee, in her official capacity; GLENN FUNK, District Attorney General of Davidson County, Tennessee, in his official capacity; CHARME P. ALLEN, District Attorney General of Knox County, Tennessee, in her official capacity; and TOM P. THOMPSON, JR., District Attorney General for Wilson County, Tennessee, in his official capacity,

Defendants.

**CIVIL ACTION
CASE NO. 3:20-cv-00501
JUDGE CAMPBELL**

**MOTION FOR TEMPORARY RESTRAINING ORDER
AND/OR PRELIMINARY INJUNCTION**

Plaintiffs Memphis Center for Reproductive Health d/b/a Choices, Planned Parenthood of Tennessee and North Mississippi, Knoxville Center for Reproductive Health, Femhealth USA,

Inc., d/b/a carafem; Dr. Kimberly Looney, and Dr. Nikki Zite (together, “Plaintiffs”) on behalf of themselves and their patients, physicians, and staff, hereby respectfully move this Court for an emergency temporary restraining order (“TRO”) followed by a preliminary injunction, to enjoin enforcement of two sets of bans on pre-viability abortion enacted by the Tennessee General Assembly through House Bill 2263/Senate Bill 2196 (the “Act”).

On June 19, 2020, the Act passed both legislative bodies and will go into effect as soon as it is signed by Governor Bill Lee. It is certain that the Governor will sign the bill imminently because his administration submitted the bill to the legislature for consideration, and the Governor has publicly lauded it as a “monumental step” toward making Tennessee “one of the most pro-life states in the country.”¹

First, the Act criminalizes the provision of abortion as soon as a “fetal heartbeat” is detected and then at cascading gestational ages up through 24 weeks from the pregnant person’s last menstrual period (“LMP”) (the “Cascading Bans”). Second, the Act also criminalizes the provision of abortion where the provider “knows” that it is being sought “because of” the sex or race of the fetus, or “a prenatal diagnosis, test, or screening indicating Down syndrome or the potential for Down syndrome in the” fetus (the “Reason Bans”) (together with the “Cascading Bans,” the “Bans”). Physicians who violate the Bans are subject to severe criminal penalties and potential loss of licensure.

Plaintiffs’ seek an emergency TRO blocking the Bans as to pre-viability abortion care, because without emergency relief, the Bans will immediately and irreparably harm Plaintiffs and their patients by instantly eviscerating pre-viability abortion access in Tennessee with

¹ Tennessee Office of the Governor, *Gov. Bill Lee Introduces Comprehensive Pro-Life Legislation*, (Jan. 23, 2020) <https://www.tn.gov/governor/news/2020/1/23/gov--bill-lee-introduces-comprehensive-pro-life-legislation.html>.

devastating effects. If the Bans take effect, Plaintiffs will have no choice but to turn away the vast majority of pregnant people seeking critical and time-sensitive medical care.

Plaintiffs also seek a preliminary injunction pursuant to Rule 65(a) of the Federal Rules of Civil Procedure, blocking enforcement of the Bans as to pre-viability abortion, to protect current and future patients from imminent and irreparable harm to their health, safety, and constitutional right to choose abortion.

The issuance of an emergency TRO is warranted. Plaintiffs have set forth specific facts in sworn declarations showing that immediate and irreparable injury will result to Plaintiffs and their patients before Defendants can be heard in opposition: specifically, that every day the Bans are in effect, virtually all patients in Tennessee will be unable to receive constitutionally-protected abortion care in the state; those seeking banned care will be forced to travel out of state if they are able; those unable to travel out of state will be forced to remain pregnant and give birth against their will; and others may resort to unsafe means to terminate their pregnancy.

As detailed more fully in the accompanying Memorandum of Law, Plaintiffs easily satisfy the remaining requirements for a TRO and the requirements for subsequent preliminary injunctive relief. Because the Bans will prohibit the vast majority of pre-viability abortions² in Tennessee contravening binding Supreme Court precedent, *Roe v. Wade*, 410 U.S. 113 (1973); the Reason Bans will implement unconstitutionally vague laws that do not give Plaintiffs fair notice of how to comply with their mandates, *United States v. Caseer*, 399 F.3d 828, 835 (6th Cir. 2005); and the Bans lack adequate exceptions for medical emergencies because they are

² The Bans' *only* application is to unconstitutionally proscribe pre-viability abortion care. Tennessee already prohibits abortion to the fullest extent permitted under the Constitution through its post-viability ban (which Plaintiffs do not challenge), and the Act explicitly does nothing to disturb that ban. Tenn. Code Ann. § 39-15-211(b)(1); H.B. 2263/S.B. 2196 §§ 39-15-216(i)(2); 217(j)(2).

unconstitutionally vague, *Women's Med. Prof'l Corp. v. Voinovich*, 130 F.3d 187, 205 (6th Cir. 1997), Plaintiffs have established a substantial likelihood of success on the merits of their claims that the Bans violate the Fourteenth Amendment to the U.S. Constitution. Further, Plaintiffs have established that the Bans will inflict irreparable constitutional, physical, emotional, and other harms on Plaintiffs' patients for which there is no adequate remedy at law. The balance of equities likewise weighs firmly in Plaintiffs' favor, and the relief they have requested will further the public interest.

Finally, Plaintiffs respectfully request that this Court exercise its discretion to waive the Federal Rule of Civil Procedure 65(c) security requirement.

Further, pursuant to FRCP 65(b)(1)(B), the undersigned counsel certify that upon electronically filing this motion and Complaint using the Courts CM/ECF system, counsel will electronically mail the filed documents to: the Office of the Attorney General and other State defendants at tnattygen@ag.tn.gov; Amy Weirich, District Attorney for Shelby County at Amy.Weirich@scdag.com; Glenn Funk, District Attorney for Davidson County at Glenn..Funk@jis.nashville.org; Charme P. Allen, District Attorney for Knox County at DAG@knoxcounty.org; and Tom P. Thompson, District Attorney for Wilson County at jllawson@tndagc.org and thswink@tndagc.org. Counsel will send the filed documents to the following by facsimile: Charme P. Allen, District Attorney for Knox County at 865-215-4253. Formal notice to Defendants and their agents, however, should not be required due to the constitutional rights at issue and the inability to effect formal process as a result of the Bans' immediate effective date.

For the foregoing reasons, and as set forth in the accompanying Memorandum of Law and Declarations, Plaintiffs respectfully request this Court GRANT the Motion for a Temporary

Restraining Order and/or Preliminary Injunction. A proposed Temporary Restraining Order is attached hereto.

Dated: June 22, 2020

Respectfully submitted,

/s/ Thomas Castelli

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*Application for admission *pro hac vice* filed
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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and correct copy of the foregoing has been served by e-mail according to instructions from the Attorney General's Office to tnattygen@ag.tn.gov and by U.S. Mail on the following on the 22nd day of June 2020:

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